

CIVIL COURT OF THE CITY OF NEW YORK

Legal/Statutory Memorandum

Subject: Housing Part Guardian Ad Litem

Class: LSM-153 (Revised)

Category: LT-10

Eff. Date: August 16, 2012

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The section of law dealing with the appointment of a Guardian Ad Litem is: CPLR, Rule 1202 of Article 12, entitled “Infants, Incompetents and Conservatees.”

The rules provided in this directive apply to proceedings in the Housing Part of the Civil Court.

General

In any proceeding triable before a judge of the Housing Part of the Civil Court of the City of New York, the court may appoint a Guardian Ad Litem (GAL), either on its own initiative or upon a motion by:

- a) an infant party over the age of fourteen; or
- b) a relative, friend or a guardian, committee of the property, or conservator; or
- c) any other party to the proceeding if a motion has not been made under subsections (a) or (b) within ten days after completion of service.
- d) HRA or any governmental agency

The notice of motion must be served upon the person to be represented if such person is over fourteen years of age and has not been judicially declared to be incompetent. Where such declaration has been made, the notice of motion must be served upon the guardian of the property, committee, or conservator or, in the absence of a guardian, committee or conservator, upon the person with whom the person to be represented resides.

Part 36 Applicability

Guardians Ad Litem appointed in Housing Part proceedings are exempt from Part 36 of the Rules of the Chief Judge, Section 36.4(a) requiring the filing of a notice of appointment. Housing Court judges shall not be required to submit form OCA 872.5. Moreover, those portions of Part 36.2(c) disqualifying from appointment active judges and judicial hearing officers of the Unified Court System, their spouses, parents or children shall be applicable to the Housing Court.

The Civil Court will maintain its own list of persons trained to serve as Guardians Ad Litem in the Housing Part. Appointments must be made exclusively from this list except as noted.

Designation of a Guardian Ad Litem

Upon determination of a need for appointment of a Guardian Ad Litem, the court may obtain names of GALs for consideration either by using the GAL File Maker Application, where available, or contacting their Supervising Judge. The Office of the Deputy Chief Administrative Judge, Director of Access to Justice Program maintains a master list of individuals qualified to act as a Guardian Ad Litem, by county. The GAL File Maker Application incorporates this list

which is updated regularly to enable the court to obtain names of GALs currently available for appointment, following a search request. For counties where the GAL File Maker Application is not available or where numerous search results do not yield a consenting GAL, County Supervising Judges are able to draw from the same GAL list to provide randomly selected names for possible appointment.

The court shall appoint a GAL from the two or three names provided, except as noted. Proceedings involving highly complex issues should be pointed out to the Supervising Judge for recommendation of more experienced candidates or candidates with special expertise. Alternatively, the court may seek permission from the Supervising Judge to appoint a GAL formally appointed to the ward or one who has specialized expertise known to the court. In such instances, permission shall be obtained from the Supervising Judge prior to the appointment of the GAL.

Exceptions

Housing Judges may appoint a family member or friend of the party in appropriate circumstances. Such appointments should be very circumscribed and carefully considered. Where the party is a client of a social services agency and has a preexisting relationship with a therapist, social worker, or appropriately trained professional, then the Housing Judge may appoint the professional as a GAL. Where the party is represented by an attorney from a legal services/legal aid type agency that provides legal services to the elderly or mentally disabled, that agency may provide to the Judge for appointment the name of a pro bono attorney, therapist, or social worker as a GAL. Appointees under this exception, as condition of the appointment, must participate in training specified by the Deputy Chief Administrative Judge, New York City Courts. The provisions of Part 36 as set forth herein apply to these appointees.

Post-Appointment

The appointing judge shall provide the Guardian Ad Litem with an Order Appointing Guardian Ad Litem, CIV-GP-112 (now in quadruplicate form, revised May, 2011). The clerk, upon receiving an Order Appointing a Guardian Ad Litem in the Part shall place the original Order in the court file, mail the second copy to the appointed Guardian Ad Litem, mail the third copy to the ward, and e-mail the last copy to the Office of Legal Affairs as specified in CCM-198 (January 3, 2012).

Guardian Ad Litem Written Consent

Pursuant to CPLR 1202 (c), "*No order appointing a guardian ad litem shall be effective until a written consent of the proposed guardian has been submitted to the court together with an affidavit stating facts showing his ability to answer for any damage sustained by his negligence or misconduct.*" Accordingly, Judges must insure that such a written consent is filed as specified in DRP-196 (August 7, 2012).

Adult Protective Services

APS will continue to compensate the Guardian Ad Litem of an individual determined to be eligible for APS intervention and assistance. The criteria for APS eligibility are:

- a) individuals with a physical or mental impairment,
- b) unable to take care of or to protect themselves, and
- c) who have no one willing and able to assist them responsibly.

The fee for attorney and non-attorney guardians ad litem is determined by APS. Orders appointing a Guardian Ad Litem for an APS-eligible ward should contain a provision directing payment of the fee.

Dated:

August 16, 2012



Fern A. Fisher
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Director, Access to Justice Program